STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY VERBISCUS, Plaintiff/Counter Defendant-Appellant,	UNPUBLISHED October 15, 2013
v	No. 312862 Roscommon Circuit Court
ROGER E. HOKE and MARY G. HOKE, Defendants/Counter Plaintiffs-Appellees.	LC No. 11-729335-CH

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

In this property dispute between appurtenant co-owners within the Sandy Oak Condominium Association, plaintiff and defendants claimed ownership in a strip of land lying between their respective properties. Defendants claimed ownership in the property pursuant to the recorded third amendment to the Master Deed, along with its recorded site plan. Plaintiff asserted title to the property based on an unrecorded site plan that was allegedly intended to be the "true" site plan for the third amendment to the Master Deed because, unlike its recorded cousin, the unrecorded site plan bore the surveyor's seal and signature. It is undisputed that the property dimensions established by these two site plans differ with respect to the contested property. Although we find that the lower court committed some errors in interpreting the relevant title documents, it nevertheless correctly granted defendants' motion for summary disposition on plaintiff's claims. Accordingly, we affirm.

I. FACTUAL BACKGROUND

The relevant facts are undisputed. Plaintiff owned Lot 49, which he purchased from the developer (SandyOak Venture, Inc.) on September 14, 2002. Defendants owned Lot 50, which they purchased from Joseph Mercadante on August 27, 1997. Mercadante, in turn, purchased the lot from the developer on August 17, 1990.

The developer recorded the original Master Deed for the Association on April 11, 1989. In this deed, the developer reserved the right to unilaterally amend the Master Deed without co-owner consent under the following circumstances: (1) to expand the Condominium Project under Article VI, § 4 (Article VI powers); (2) to correct surveying or recording errors that do not materially affect any co-owner's rights under Article X, § 2 (Article X powers); and (3) to

modify the size of unsold condominium units in the project under Article VII, § 3 (Article VII powers). However, Article X, § 1 restricted the developer's ability to modify the dimensions of sold units, stating that "[n]o Unit dimension may be modified without the consent of the Co-owner of such Unit."

The Master Deed was amended three times during the relevant years. The first amendment was recorded on August 18, 1993, while the second and third amendments were each recorded on January 17, 1995.[1] The developer expressly enacted these amendments pursuant to its reserved powers under Article VI and Article X of the original Master Deed. According to Russell Cavanaugh, a surveyor, the three recorded amendments altered the boundary lines between Lots 49 and 50 by reducing the size of Lot 49 and expanding the size of Lot 50.

Plaintiff sued defendants on August 17, 2011, seeking damages for trespass and an action to quiet title, asserting that defendants unlawfully encroached on his property by placing the following items across his parcel: (1) a fence; (2) a portion of a removable shed; (3) a portion of defendant's RV; and (4) flowers. Plaintiff asserted that the most recent amendment to the Master Deed was improperly recorded, on the basis that an unrecorded, enlarged site plan bearing the surveyor's seal and signature accurately described the true property dimensions. Defendants countersued, seeking a declaratory judgment that the recorded site plan in the Master Deed prevailed over the unrecorded enlarged copy. Defendants alternatively argued that they acquired title to the land through adverse possession or acquiescence.

In granting defendants' motion for summary disposition, the court held that the recorded site plan in the third amendment to the Master Deed prevailed over the unrecorded site plans. Because the court found that defendants' fence line properly aligned with the boundaries of the recorded site plan, the court granted summary disposition to defendants and held that defendants held title in fee simple up to their fence line. The court ruled that defendants' other claims—title by adverse possession and acquiescence—were moot and, thus, declined to decide those issues.

II. TITLE TO THE CONTESTED PROPERTY

A. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Additionally, because an action to quiet title is equitable in nature, this Court reviews de novo the trial court's ultimate ruling and its legal conclusions. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). Although defendants moved for summary disposition based on both MCR 2.116(C)(8) and (C)(10), the court considered documentary evidence outside the parties' pleadings when it rendered its decision, specifically Cavanaugh's surveyor report. Therefore, we apply the standards of review applicable to a motion under MCR 2.116(C)(10). *Nuculovic v Hill*, 287 Mich App 58, 62; 783 NW2d 124 (2010).

[1] Although the second amendment to the Master Deed is not part of the record, MCR 7.210(A), its existence is explicitly referred to in the third amendment.

In a motion for summary disposition under MCR 2.116(C)(10), the court evaluates whether a genuine issue of material fact exists. *Latham*, 480 Mich at 111. A genuine issue of material fact exists if the record, viewed in a light most favorable to the nonmoving party, establishes a matter in which reasonable minds could differ. *Nuculovic*, 287 Mich App at 62. Further, the court may not resolve disputed factual issues in ruling on a motion for summary disposition. *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004).

This case also presents issues of statutory construction, which are questions of law that this Court reviews de novo. *Id*. at 646. When interpreting a statute, the court's goal is to give effect to the Legislature's. *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 628; 765NW2d 31 (2009). Unambiguous statutory language should be given its ordinary meaning and the Legislature is presumed to have intended the meaning expressed in the statute, rendering judicial construction unnecessary. *Id.* at 629. This Court must avoid an interpretation of a statute that would render any part of the language as surplusage or nugatory. *Apsey v Memorial Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007).

B. THE CONDOMINIUM ACT

Under the Condominium Act, "each condominium unit, together with and inseparable from its appurtenant share of the common elements, shall be a sole property subject to ownership . . . independent of the other condominium units." MCL 559.161; *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 143; 783 NW2d 133 (2010). Condominium units are those "portions of the condominium project designed and intended for separate ownership and use, as described in the master deed." MCL 559.104(1); MCL 559.163. Therefore, the rights that plaintiff and defendants possess in their respective properties are derived from the Master Deed. The Master Deed, as well as any amendments to the deed, become effective once recorded. MCL 559.173(1); MCL 559.191.

Although, the parties apparently conceded at trial and before this Court that the amendments to the Master Deed effectively altered the boundary lines between Lots 49 and 50, we believe this a premature assumption. MCL 559.150 permits a developer to unilaterally amend the master deed "if there is no co-owner other than the developer." If there are other co-owners in the association, the developer may only unilaterally amend the master deed in certain circumstances; otherwise, co-owner consent is required. MCL 559.190(1) permits a developer to unilaterally amend the master deed if doing so "does not materially alter or change the rights of a co-owner or mortgagee and if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the association." This subsection also provides that a developer may modify "the types and sizes of unsold condominium units and their appurtenant limited common elements" without co-owner consent. *Id.* MCL 559.190(3) also provides:

> The developer may reserve, in the condominium documents, the right to amend materially the condominium documents to achieve specified purposes, except [modifying the calculation method in determining the percentage of value as to each unit in the project]. . . . If a proper reservation is made, the condominium documents may be amended to achieve the specified purposes without the consent of co-owners or mortgagees.

C. PLAINTIFF'S CLAIMS UNDER THE MASTER DEED

The Master Deed, as well as its three amendments, complied with the above requirements in the Condominium Act. As mentioned earlier, the developer expressly retained the right to unilaterally amend the Master Deed under a few limited circumstances. In the amendments to the Master Deed, the developer invoked its reserved powers under Article VI and Article X. But, altering the dimensions of sold condominium units is completely unrelated to expanding the size of the Condominium Project, as those powers concern the need to create additional units and incorporate them into the Association. Moreover, even if such alterations could fall under the scope of the developer's Article X powers, it goes without saying that any changes to the dimensions of a sold condominium unit would materially affect that co-owner's rights in the property if it were effectuated without consent. Further, the developer was clearly restricted from altering unit dimensions of sold units without the co-owner's consent. Therefore, the developer lacked the authority to change the boundaries of any sold units without the express consent of the affected co-owners.

Under the language of the Master Deed and that of the Condominium Act, the court erred in holding that the property dimensions dictated by the site plan in the third amendment established the boundary lines between Lots 49 and 50. Mercandante purchased Lot 50 on August 17, 1990, which was before the developer recorded any of the three amendments to the Master Deed. The record is unclear whether Mercandante gave consent to the developer to expand the size of Lot 50 when the developer recorded these amendments. At first glance, this would only appear to benefit Mercandante, such that defendants could argue that Mercandante would have obviously consented to the change. Such an inference is inappropriate, though, as there could be many reasons why Mercandante would not have given consent for the change. For example, the additional property could have increased his property tax burden or increased his property maintenance costs. But, Mercandante's execution and delivery of a warranty deed to defendants which expressly included the contested property could be deemed evidence of acceptance. Nevertheless, for purposes of this case, we need not decide whether Mercandante actually accepted the expansion of his property.

Unlike defendants' property, plaintiff purchased Lot 49 on September 14, 2002, which was long after the developer made all three amendments to the Master Deed. It is undisputed that this lot remained unsold until plaintiff purchased the lot from the developer. Pursuant to the developer's reserved powers under Article VII and its asserted power under Article X of the Master Deed, the recorded amendments to the Master Deed effectively reduced the property dimensions of Lot 49. Accordingly, under the recorded documents, plaintiff never held record title to and lacked any interest in the contested property. As between defendants and plaintiff, defendants hold better title, and this dispute is only between plaintiff and defendants. Accordingly, defendants were entitled to judgment as a matter of law on plaintiff's claims, and the court properly granted defendants' motion for summary disposition.[2]

[2] Although the court's order broadly conferred to defendants title in fee simple to the contested property, MCR 3.411(H) indicates that, except "for title acquired by adverse possession, the

Plaintiff argues that the unrecorded and undated site plan found in the Roscommon County Register of Deeds should prevail over the recorded site plan and should be used to establish the true boundary line between the lots. According to the surveyor, the property lines drawn in the unrecorded site plan shift the boundaries of Lots 49 and 50 back to how they were established in the original Master Deed. Plaintiff claims that the site plan in the third amendment was clearly invalid because it failed to meet surveyor signature and seal requirements of Mich Admin Code, Rule 559.401(2). Plaintiff, however, failed to demonstrate that the developer's failure to comply with this rule provided him with his requested remedy: the removal of the recorded plans and the recordation of the unrecorded plans. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Regardless, based on the clear language of MCL 559.191, amendments to a master deed, once accepted and recorded by the county, are effective notwithstanding any defects in form.

Although plaintiff's related argument is somewhat unclear, it appears that he asserts that the court should have granted his motion to remove the unrecorded site plans from the Roscommon County Register of Deeds and have them recorded in a manner that superseded the recorded site plan, either by compelling the developer or the county to comply with the order. Although plaintiff offers no legal authority establishing his entitlement to this relief, the lower court did not err in refusing to grant plaintiff his requested relief because plaintiff failed to add these entities as parties. In *Mather Investors, LLC v Larson*, 271 Mich App 254, 257-258; 720 NW2d 575 (2006), this Court held:

> [J]oinder is required of all parties concerned in the controversy . . . to have their respective interests charged or protected, and to end the controversy once for all. A party is indispensable to a case if that party has an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. [Citations and quotation marks omitted.]

In plaintiff's motion to remove the enlarged plans, he essentially asked the court to order Roscommon County or the developer to deliver the unrecorded enlarged site plan to plaintiff and record in its place an accurately reduced site plan. Plaintiff's request is, in essence, an action seeking mandamus against the county, yet plaintiff did not bring this claim against the county. As to the developer, plaintiff presented no argument as to how it would be appropriate to impose

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judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines *only* the rights and interests of the known and unknown persons *who are parties to the action*, and of persons claiming through those parties by title accruing after the commencement of the action" (emphasis added). Because the court's order did not hold that defendants acquired title to the property through adverse possession, but rather through the title documents, the order did not affect any nonparty's rights in the contested property. Therefore, the court's grant of summary disposition was proper.

a legal duty on this nonparty.[3] Regardless, because plaintiff failed to join these parties to this cause of action in order to seek this relief, the court properly refused to grant plaintiff this relief.

D. ADVERSE POSSESSION AND ACQUIESCENCE

Turning to plaintiff's final issues, we decline to address whether defendants acquired title to the contested property due to adverse possession. Plaintiff argues that the court should have denied defendants' motion for summary disposition on their claims of adverse possession and acquiescence. However, the court declined to decide these issues on the grounds of mootness. This decision had no bearing on plaintiff's interest in the property. Accordingly, plaintiff was not "aggrieved" as a result of this decision and, thus, lacks standing to appeal because he fails to qualify as an appellant on this issue. MCR 7.203(A); *Manuel v Gill*, 481 Mich 637, 643-645; 753 NW2d 48 (2008) (noting that a party lacks standing to appeal from a lower court's decision unless the party suffered a "concrete and particularized injury" as a result of the court's decision). Further, as noted above, plaintiff lacks standing to raise these issues because plaintiff lacks any interest in the contested property. Accordingly, we decline to address them.

III. CONCLUSION

Although the nature of defendant's interest in the property is unclear, defendants' title is superior to that of plaintiff's, as he never held any interest in the contested property. Therefore, we affirm. As the prevailing parties defendants may tax costs pursuant to MCR 7.219.

/s/ Michael J. Riordan
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

[3] Additionally, plaintiff presented no legal authority establishing his right to compel the developer to retroactively exercise its amendment rights in a manner advantageous to the co-owner. The developer could have chosen to deviate from its surveyor's *proposed* site plan for a number of reasons, which may be why the enlarged plans were never recorded in the first place.